



STATEMENT OF

**THE HONORABLE BETTY LOU WARD
COUNTY COMMISSIONER, WAKE COUNTY,
NORTH CAROLINA AND
PRESIDENT, NATIONAL ASSOCIATION OF COUNTIES**

**ON PRESIDENT CLINTON'S EXECUTIVE ORDER 13083
"FEDERALISM"**

**BEFORE THE SUBCOMMITTEE ON NATIONAL ECONOMIC
GROWTH, NATURAL RESOURCES, AND REGULATORY
AFFAIRS OF THE HOUSE COMMITTEE ON GOVERNMENT
REFORM AND OVERSIGHT**

**ON BEHALF OF THE
NATIONAL ASSOCIATION OF COUNTIES**

**JULY 28, 1998
WASHINGTON, DC**



GOOD MORNING. I AM BETTY LOU WARD, COUNTY COMMISSIONER OF WAKE COUNTY, NORTH CAROLINA AND NEWLY INSTALLED PRESIDENT OF THE NATIONAL ASSOCIATION OF COUNTIES (NACo)*.NACo APPRECIATES THE SUBCOMMITTEE'S INVITATION TO HEAR OUR VIEWS ON PRESIDENT CLINTON'S EXECUTIVE ORDER 13083 "FEDERALISM" PUBLISHED IN THE *FEDERAL REGZSTER ON MAY 19, 1998.*

THERE HAS BEEN MUCH SAID ABOUT THE PROCESS UTILIZED IN PROMULGATING EXECUTIVE ORDER 13083, THE SUBSTANTIVE CHANGES MADE BY THIS EXECUTIVE ORDER AND THE NEED TO MAKE SUCH CHANGES.

BEFORE ADDRESSING THESE THREE IMPORTANT ISSUES, I WISH TO EMPHASIZE TO THIS SUBCOMMITTEE THAT THE NATIONAL ASSOCIATION OF COUNTIES HAS DEVELOPED A GOOD WORKING RELATIONSHIP WITH THIS ADMINISTRATION AND APPRECIATES THAT THE WHITE HOUSE AND FEDERAL AGENCIES HAVE BEEN OPEN TO HEAR THE CONCERNS OF COUNTIES. WE BELIEVE THAT THE CONSULTATIVE PROCESS IN DEVELOPING EXECUTIVE ORDER 13083 WAS FLAWED BUT ALSO BELIEVE

. The National Association of Counties is the only national organization representing county government in the United States. Through its membership, urban, suburban and rural counties join together to build effective, responsive county government. The goals of the organization are to: improve county government; serve as the national spokesman for county government; serve as a liaison between the nation's counties and other levels of government; achieve public understanding of the role of counties in the federal system.

THESE FLAWS CAN AND WILL BE RECTIFIED THROUGH CONSTANT AND CONTINUOUS COMMUNICATIONS.

I. NACo RESOLUTION

LAST WEEK, NACo CELEBRATED ITS 63RD ANNUAL CONFERENCE IN MULTNOMAH COUNTY (PORTLAND), OREGON. JUST PRIOR TO THE CONFERENCE, WE LEARNED OF EXECUTIVE ORDER 13083 AND ASKED THE ADMINISTRATION TO WITHDRAW THE ORDER IN ORDER TO ENTER INTO MEANINGFUL DISCUSSIONS CONCERNING ITS IMPLICATIONS. AS YOU KNOW, MR. CHAIRMAN, NACo CO-SIGNED THE JULY 17 LETTER BY THE BIG-SEVEN ORGANIZATIONS REPRESENTING GOVERNMENT OFFICIALS CALLING FOR A WITHDRAWAL OF EXECUTIVE ORDER 13083. NACo WAS THE FIRST OF THE ORGANIZATIONS TO CELEBRATE ITS ANNUAL CONFERENCE AND WE IMMEDIATELY ADOPTED A UNANIMOUS RESOLUTION CALLING FOR:

- 1. WITHDRAWAL OF EXECUTIVE ORDER 13083;**
- 2. REVIEW OF THE NEED TO CHANGE EXECUTIVE ORDERS 12612 AND 12825;**
- 3. MEANINGFUL DISCUSSION ABOUT THE NEED TO CLARIFY THESE EXECUTIVE ORDERS; AND**
- 4. THAT DISCUSSIONS ON FEDERALISM INCLUDE ALL LOCAL AND STATE GOVERNMENT ASSOCIATIONS.**

ATTACHED IS A COPY OF NACo'S RESOLUTION. I EXPECT THAT EACH OF THE SEVEN ORGANIZATIONS HAVING MEETINGS IN THE FUTURE WILL BE PASSING SIMILAR RESOLUTIONS.

II. SUBSTANTIVE CHANGES

NACo BELIEVES THERE ARE A NUMBER OF SUBSTANTIVE CHANGES MADE IN EXECUTIVE ORDER 13083 THAT ERODE THE PRINCIPLES OF FEDERALISM AND REDUCE THE OPPORTUNITY OF LOCAL AND STATE GOVERNMENTS TO BETTER ADMINISTER GOVERNMENT PROGRAMS AND INITIATIVES.

FIVE KEY PRINCIPLES HAVE BEEN DROPPED IN EXECUTIVE ORDER 13083 AND WILL NEED TO BE ADDRESSED. THESE ARE:

- 1. PREEMPTION -- ANY REFERENCES TO LOCAL PREEMPTION—NACo HAS A KEY POLICY ADOPTED A NUMBER OF YEARS AGO OPPOSING THE PREEMPTION OF LOCAL AUTHORITY. SECTION 4 OF NOW REVOKED EXECUTIVE ORDER 12612, SPEAKS DIRECTLY TO THIS ISSUE CALLING FOR PREEMPTIONS TO BE IMPOSED ONLY IN PROBLEMS OF NATIONAL SCOPE AND NOT COMMON TO STATES. THEY ARE ENCOURAGED TO BE USED AT A MINIMUM, LEVEL NECESSARY. THE NATION'S COUNTIES ARE CONCERNED THAT THE PREEMPTION ISSUE HAS NOT BEEN CLARIFIED SUFFICIENTLY IN EXECUTIVE ORDER 13083. WITHOUT MAKING REFERENCE TO THE WORD PREEMPTION,**

NINE CIRCUMSTANCES ARE LISTED THAT COULD JUSTIFY FEDERAL ACTION. WE RECOGNIZE THE NEED FOR SOME OF THOSE LISTED BUT OTHERS, SUCH AS: “WHEN DECENTRALIZATION INCREASES COSTS” OR “WHEN THERE IS RELUCTANCE TO IMPOSE REGULATIONS THAT AFFECT BUSINESS ACTIVITY”, OR “WHEN THE MATTER RELATES TO FEDERALLY OWNED OR MANAGED PROPERTY” NEED TO BE EXPLAINED FURTHER. DEFINITIONS FOR TERMS SUCH AS “HARM” “NEED” “COSTS” AND OTHER WORDS ALSO NEED TO BE CLARIFIED.

2. **FEDERAL ASSESSMENTS** – EXECUTIVE ORDER 13083 HAS DELETED REFERENCES TO THE NEED TO MAKE FEDERAL ASSESSMENTS OF FUTURE POLICIES UPON LOCAL AND STATE GOVERNMENT. WE ARE PARTICULARLY CONCERNED WITH THE POTENTIAL EXTENT TO WHICH A POLICY MAY IMPOSE ADDITIONAL COSTS AND BURDENS ON LOCAL AND STATE GOVERNMENT. SECTION 4(B) SPEAKS TO THIS ISSUE BUT SHOULD BE EXPANDED TO ENSURE THE CONTINUATION OF AN AGENCY DESIGNEE RESPONSIBLE FOR ENSURING THE IMPLEMENTATION OF ASSESSMENTS ON LOCAL AND STATE GOVERNMENTS.
3. **CONSULTATION** – SECTION 4(A) **CONSULTATION** THE NEW ORDER SHOULD INCLUDE A REFERENCE TO ORGANIZATIONS REPRESENTING LOCAL AND STATE GOVERNMENTS.
4. **ORDER TO REDUCE THE IMPOSITION OF UNFUNDED MANDATES** – COUNTIES ARE CONCERNED THAT THE NEW ORDER DOES NOT

CLEARLY CALL FOR REDUCTIONS OF UNFUNDED MANDATES.

ALTHOUGH SECTION 4 CONSULTATION DOES INCLUDE A PROCESS TO EITHER PROVIDE THE FUNDS NECESSARY OR JUSTIFY THE NEED FOR A MANDATE, IT MOVES AWAY FROM PRESIDENT CLINTON'S PREVIOUS EXECUTIVE ORDER (SECTION 1 OF EXECUTIVE ORDER 12825 TITLED "REDUCTION OF UNFUNDED MANDATES") BY NOT CLEARLY INDICATING TO FEDERAL AGENCIES THAT UNFUNDED MANDATES SHOULD BE AVOIDED.

- 5. SPECIAL REQUIREMENTS FOR LEGISLATIVE PROPOSALS -- THE PRESIDENT'S NEW EXECUTIVE ORDER DOES NOT INCLUDE REQUIREMENTS TO FEDERAL AGENCIES TO ABSTAIN FROM PROPOSING TO THE CONGRESS ANY LEGISLATION THAT IS DIRECTED TO INTERFERE WITH ESSENTIAL STATE AND LOCAL FUNCTIONS OR SERVE TO PREEMPT STATE AND LOCAL LAWS, UNLESS CONSISTENT WITH FUNDAMENTAL FEDERALISM PRINCIPLES. NACo RECOMMENDS THAT SECTION 5 OF NOW REVOKED EXECUTIVE ORDER 12612, TITLED SPECIAL REQUIREMENTS FOR LEGISLATIVE PROPOSALS SHOULD BE INCLUDED IN ITS ENTIRETY.**

III. THE NEED FOR CHANGE

MR. CHAIRMAN, SINCE NO CONSULTATION PROCESS WAS USED IN THE DRAFTING OF EXECUTIVE ORDER 13083, NACo IS AT A LOSS TO UNDERSTAND THE NEED FOR MODIFYING THE FEDERALISM

RELATIONSHIPS DEVELOPED THROUGHOUT THE PREVIOUS THREE PRESIDENTIAL ADMINISTRATIONS AND EMBODIED IN THE NOW REVOKED EXECUTIVE ORDERS. WE HOPE TO ENTER INTO MEANINGFUL DISCUSSIONS WITH THE ADMINISTRATION AS TO WHY A NEW EXECUTIVE ORDER IS NECESSARY AND HELP TO SHAPE MODIFICATIONS TO OUR RELATIONSHIP WHICH IS DEEMED SUITABLE TO ALL CONCERNED.

I WISH TO REITERATE TO THE PRESIDENT THAT THE NATIONAL ASSOCIATION OF COUNTIES FEELS THAT EXECUTIVE ORDER 13083 SHOULD BE WITHDRAWN IMMEDIATELY AND THAT WE ENTER, TOGETHER WITH OTHER ORGANIZATIONS REPRESENTING LOCAL AND STATE GOVERNMENTS, INTO DISCUSSIONS ON THE NEED TO FURTHER ALTER THE FEDERALISM RELATIONSHIP.

IV. LEGISLATIVE ACTIONS ON PREEMPTION

THE NATIONAL ASSOCIATION OF COUNTIES IS ALSO CONCERNED WITH CONGRESSIONAL ACTIONS TO PREEMPT STATE AND LOCAL GOVERNMENT AUTHORITY AND INITIATIVES. TWO WEEKS AGO, THE U. S. SENATE VOTED ON “TAKINGS” LEGISLATION, AN ATTEMPT TO PREEMPT LOCAL AUTHORITY OVER LAND USE DECISIONS. THE HOUSE OF REPRESENTATIVES PASSED SIMILAR LEGISLATION LAST YEAR. THIS WEEK, POSSIBLY TODAY, THE HOUSE WILL VOTE ON AN AMENDMENT THAT WOULD DENY, FEDERAL FUNDS TO LOCAL GOVERNMENTS THAT HAVE

ADOPTED LEGAL LOCAL CONTRACTING GUIDELINES. I HOPE THIS HEARING SERVES AS AN OPEN DOOR TO CONSTRUCTIVE DIALOGUE WITH THE CONGRESS ON THESE IMPORTANT ISSUES.

AGAIN, I WANT TO THANK THE SUBCOMMITTEE FOR THE OPPORTUNITY TO EXPRESS THE VIEWS OF THE NATIONAL ASSOCIATION OF COUNTIES ON THIS VERY IMPORTANT MATTER.

RESOLUTION ON EXECUTIVE ORDER ON FEDERALISM (13083)

WHEREAS, collaboration of the three levels of government has improved in recent years with examples, such as: the Unfunded Mandates Reform Act, the reauthorized surface transportation legislation, welfare reform, health care reform, the balanced budget agreement and safe drinking water; and

WHEREAS, President Reagan issued Executive Order on Federalism (12612) in 1987, with the stated purpose of restoring the division of governmental responsibilities between federal and state governments that was intended by the Framers of the Constitution; and

WHEREAS, President Clinton issued Executive Order 12875 in 1993, with the stated purpose of reducing the imposition of unfunded mandates, streamlining the application process for and increasing the availability of waivers, requiring for more cost analysis and risk assessments for all Federal government regulations, and establishing regular and meaningful consultation with state, local and tribal governments; and

WHEREAS, the President issued Executive Order 13083 which revokes Executive Order 12612 and Executive Order 12875 and appears to reverse the past collaborative efforts proposing renewed preeminence of the federal government; and

WHEREAS, neither the National Association of Counties (NACo) nor any local or state government official was consulted in the drafting of Executive Order 13083:

THEREFORE, BE IT RESOLVED that NACo requests that the President withdraw Executive Order on Federalism (13083); and

BE IT FURTHER RESOLVED that NACo calls upon the Administration to review any need for changing Executive Orders 12612 and 12875; and

BE IT FURTHER RESOLVED that NACo stands ready and willing to begin meaningful discussion with the Administration about the need for further clarification of Federalism and Executive Orders 12612 and 12875; and

BE IT FURTHER RESOLVED that such discussions on Federalism include all local and state government associations.

